

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN T. WILLETT,

Plaintiff,

STATEMENT OF FACTS

v.

CITY OF BUFFALO,
BUFFALO POLICE DEPARTMENT,
JOHN CIRULLI, Individually and in his
former Official Capacity, P.O. NICHOLAS
MILITELLO, LT. JEFFREY RINALDO and
JOHN/JANE DOE OFFICERS,

Civ. No. 15-CV-330A

Defendants.

Pursuant to Local Rule 56.1, Defendant John Cirulli hereby submits this Statement of Material Facts as to which he contends there is no genuine issue to be tried.

Plaintiff John T. Willet brought a civil rights action against various defendants which includes a deliberate indifference cause of action and a negligent infliction of emotional distress cause of action. (Plaintiff's Verified Complaint at 8 and 10) (Dkt. #1). Each of these causes of action are asserted against all named defendants. *Id.* In a Report and Recommendation dated September 20, 2016, it was recommended by this Court that these two causes of action be dismissed as a matter of law as against Defendants City of Buffalo, Buffalo Police Department, P.O. Nicholas Militello, Lt. Jeffrey Rinaldo and John/Jane Doe Officers (hereinafter "the city defendants") [Dkt. #33 at 14-17]. The deliberate indifference claim (Plaintiff's Fifth cause of action) was dismissed on the basis that Plaintiff's medical records did not demonstrate an injury capable of producing the required "condition of urgency." *Id.* at 15. The negligent infliction of emotional distress claim

(Plaintiff's Seventh cause of action) was dismissed as duplicative of other remaining causes of action. *Id.* at 17. With the exception of initial disclosures by the defendants, no discovery has been conducted in this case. *Id.* at 5.

Dated: Buffalo, New York
September 21, 2016.

/s/ Scott R. Hapeman, Esq.
Scott R. Hapeman, Esq.
PERSONIUS MELBER LLP
Attorneys for Defendant
JOHN CIRULLI
2100 Main Place Tower
Buffalo, NY 14202
(716) 855-1050
srh@personiusmelber.com

TO: David M. Lee, Esq.
Assistant Corporation Counsel
65 Niagara Square
1104 City Hall
65 Niagara Square
Buffalo, New York 14202
(716) 851-4105
dlee@city-buffalo.com

Phillip Dabney, Jr. Esq.
Law Offices of Phillip Dabney, Jr. Esq.
Attorney for Plaintiff
37 Franklin Street, Suite 1110
Buffalo, New York 14202
(716) 803-8217
dabneyesq@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on the 20TH day of September, 2016, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

David M. Lee, Esq.
Assistant Corporation Counsel
65 Niagara Square
1104 City Hall
65 Niagara Square
Buffalo, New York 14202
(716) 851-4105
dlee@city-buffalo.com

Phillip Dabney, Jr. Esq.
Law Offices of Phillip Dabney, Jr. Esq.
Attorney for Plaintiff
37 Franklin Street, Suite 1110
Buffalo, New York 14202
(716) 803-8217
dabneyesq@gmail.com

/s/ Scott R. Hapeman, Esq.
Scott R. Hapeman, Esq.
PERSONIUS MELBER LLP
Attorneys for Defendant
JOHN CIRULLI
2100 Main Place Tower
Buffalo, NY 14202
(716) 855-1050
srh@personiusmelber.com